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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analysis of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan for introducing torts (any wrong, other than a breach of contract, resulting in a personal injury or property damage because of a person's failure to carry out a duty). The unit also examines circumstances under which a property owner has the privilege of using force in defense of real and/or personal property. Although similar in content, the student and teacher lesson plans are presented separately to facilitate individual or small group work by students and to provide teachers with additional background information. Following a lawyer's visit to the classroom, students examine hypothetical case studies and questions for discussion. A glossary, a reading about court systems, and a simplified view of federal and California court structures are also provided. The lawyer's lesson plan focuses on the landmark case, "Katko versus Briney", presenting thought-provoking questions and discussion concerning the use of devices which can cause death or serious bodily injury in defense of real and/or personal property. (LH)

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"KEEP OUT - DANGER!"

Use of Devices Which Can Cause Death or Serious Bodily Injury in Defense of Real and/or Personal Property

A Student Lesson Plan
Prepared by Estelle Howard, 1976
Richard Weintraub, 1976

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KEEP OUT - DANGER!
(Use of Devices Which Can Cause
Death or Serious Bodily Injury
in Defense of Real and/or
Personal Property)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT

This lesson will introduce you to an area of law called TORTS. It is an important part of the law for citizens to understand as it covers many of the kinds of accidents and incidents any of us can be involved in.

Study the definition of a Tort and the examples given. Analyze the incidents below and discuss them with the class.

A TORT is defined as any wrong, other than a breach of contract, resulting in a personal injury or property damage because of a person's failure to carry out a duty. The law recognizes that people should act with reasonable care to avoid harming other persons or the property of other persons. A tort is a civil action. The penalties, under civil law, require the offender (defendant) to pay money, or to do or not to do a specific act to or for the person bringing suit (plaintiff). A tort can be either intentional or unintentional.

An Intentional Tort is the result of a deliberate attempt to cause harm. Example, battery is the intentional, harmful or offensive touching of another without his/her consent. An injured person can sue to recover for his/her injury. The same act of battery can result in both a civil and criminal prosecution.

Frank knocks Bill off his bike and Bill's arm is broken.

Frank has committed a crime by his willful and forceful act of knocking Bill off his bike. The state can prosecute Frank for his criminal battery. Bill can sue Frank for the injury to his arm which was a result of a civil battery.

An unintentional tort is an unintentional act that causes injury. This is further defined as negligent conduct, which is failure to exercise reasonable or ordinary amount of care in a situation that causes harm to someone or something.

Jim is riding his skateboard down the driveway next to his house and runs into Mrs. Jones, who is walking on the sidewalk, and knocks her down.

It is reasonable to expect that people might be walking on a sidewalk, and Jim owes a duty to these people not to run into them while playing. He was negligent in this duty when he ran into Mrs. Jones.

So that you will understand the difference between an intentional and an unintentional tort, read the incidents below and answer the questions.

HYPOTHETICALS AND QUESTIONS FOR DISCUSSION

A. Lois has met a young man at a party whom she finds attractive. When she is ready to leave, she goes up to the young man and kisses him on the cheek.

1. Is the kiss a battery?

2. If you think it is a battery, would you say it was a civil or a criminal battery? Explain your reasons.

B. Billy and Fred are on their front lawn throwing passes to each other with a football. Billy misses a pass and the ball goes through Mr. Jones' picture window and breaks a lamp.

1. Is this a tort? If so, is it an intentional or unintentional act? Explain the reasons for your answers?

2. Do you think Mr. Jones is entitled to payment for the damage done to the window and the lamp? Why? Why not?

C. Two young men approach Mrs. Littlejohn who is taking a walk on the street. They ask for the time. As Mrs. Littlejohn raises her arm to look at her wristwatch, the men knock her down, grab her purse and run. Mrs. Littlejohn's arm is broken in the fall.

1. Is this a tort? If so, is it an intentional or unintentional act? Explain your reasons for your answer.

2. Would you say both a civil battery and a criminal battery have been committed? Explain your reasons for your answer.

D. Two young men are playing around on the sidewalk, boxing and chasing each other. One of the fellows bumps into Mrs. Francis, who is walking on the street, and knocks her down. Her arm is broken in the fall.

1. Is this a tort? If so, is it an intentional or unintentional act? Explain your reasons for your answer.

2. Can Mrs. Francis sue the young man for damages? Why? Why not?

E. Paula Williams had been marketing and was walking home when a car drew up alongside her and stopped. Two nurses jumped out of the car, grabbed Paula and tried to force her into the car. Paula resisted. However, they managed to get her into the car, locked the door and drove her to a nearby mental institution.

When they brought her into the hospital, it was discovered that Paula was not the missing patient the nurses had been looking for.

1. Is this a battery? If you think it is a battery, is it a civil or a criminal battery? Explain your reasons.

2. Can Paula Williams sue the mental institution and the nurses for taking her prisoner and restraining her against her will?

F. It is a very hot day. Jim and Lucy would like to take a swim in their neighbor's pool but the Browns are not at home. They decide to swim anyway. The Browns come home and find Lucy and Jim in the pool and chase them out.

1. Do you think that Lucy and Jim have trespassed on the Browns' property? Why? Would you say that trespass is a tort? Why?

2. Since no damage has been caused to the Browns' property, do you think they could sue Lucy and Jim?

KEEP OUT - DANGER!

LAWYER-IN-THE-CLASSROOM UNIT

Read the case the lawyer will analyze and discuss with the class. Study the questions listed below so that you can enter into discussion with the lawyer, ask questions about facts and procedure, and express your opinion on the issues raised by the case.

CASE

Mr. Smith owned an unoccupied farmhouse. Through the years he had boarded up the windows and doors and posted "no trespass" signs in an attempt to stop intrusions by trespassers. On June 19, 1976, Mr. Smith set a "shotgun trap" in the bedroom. A 20-gauge shotgun was secured to an iron bed with the barrel pointed at the bedroom door. It was rigged with wire from the doorknob to the gun's trigger so that it would fire and hit an intruder in the legs when the door was opened. The bedroom window was boarded up so that the intruder could not see the existence of the shotgun trap, and no warning of its presence was posted on the outside of the farmhouse.

Mr. Jones, a thief, entered the old farmhouse by removing a board from a porch window. As he started to open the bedroom door, the shotgun went off, striking him in the right leg above the ankle bone. Much of his leg was blown away.

Mr. Jones sues Mr. Smith and seeks to recover for the injury.

QUESTIONS

A. What are the major issues raised by the case?

1. Does a landowner have the right to utilize devices which can cause death or serious bodily injury in order to exclude trespassers from his real and/or personal property?

2. In designing the limitations of such a privilege, does it make a difference if the property is unoccupied, as opposed to occupied?

3. In designing the limitations of such a privilege, does it make a difference if the landowner posts a warning to the potential intruder of the danger should the intruder enter the premises?

4. In designing the limitations of such a privilege, does the reason for the intrusion (theft, seeking shelter, etc.) make a difference?

B. What are the interests of Mr. Jones in this issue? Of Mr. Smith? Do you think society has an interest? Whose interests should be or are protected?

C. If you were Mr. Smith, what arguments would you make in defense of using such a trap?

D. If you were Mr. Jones, what arguments would you make against using such a trap?

E. Who do you think should win the case? Why?

FOLLOW-UP UNIT

Read the material the teacher has handed you. Study the hypothetical so that you can participate in classroom analysis of the situation. Use the questions as a guide to your discussion. The information you gained from the lawyer's visit will be of importance to your analysis.

HYPOTHETICAL CASE #1

Although the city had grown up around him, Mr. Brown maintained his property as a tiny farm in the midst of the apartment houses that lined the street where he lived. He had several varieties of fruit and a large garden filled with tomatoes, lettuce, cucumbers, onions, and other choice vegetables.

Over the years, the boys in the neighborhood have considered it good sport to poach on Mr. Brown's fruits and vegetables, as much to excite his temper as to enjoy the delicious food. To protect himself against these young marauders, Mr. Brown topped his fences with barbed-wire and posted signs reading "Private Property. Keep Out. Trespassers Will Be Prosecuted" around the property.

One evening Jerry and Bill decided to steal some peaches off the trees in Mr. Brown's garden. They sneaked into the garden by moving a loose board in the fence and were in the trees picking the fruit when Mr. Brown saw them. He yelled at them to get out. "I'm calling the police," he shouted at them. "Get out of my trees, you vandals!"

The frightened boys dropped out of the trees and ran across the yard. Jerry got out through the loose slat, but Bill, in his frightened hurry, tried to scale the fence. As he attempted to squeeze under the barbed wire, he received a severe electric jolt that knocked him off the fence. His hands were burned and his face and body were severely torn by the barbs. His parents sued Mr. Brown for damages resulting from the wounds Bill had received from the electrified barbed wire.

QUESTION

A. Had Mr. Brown the right to protect his property from trespassers? Why?

B. If you believe that he does, do you agree that he has a right to put up a fence that creates a danger of injury to a person who might trespass? Why? Why not?

C. Does the fact that the barbed wire fence was visibly dangerous and that signs warning against trespassing were posted around the property give Mr Brown the right to have a "hidden" device to defend his property? Why? Why not?

D. Although the boys obviously did not pose any threat to Mr. Brown, was it reasonable for Mr. Brown to assume that a trespasser might be a danger to himself and his property? If so, do you think it was lawful for him to electrify the fence and not have a sign posted announcing this fact? Why? Why not?

E. Do you think Bill's parents are justified in suing Mr. Brown for the injuries suffered by their son? Why? Why not?

F. If you were the judge in this case, how would you resolve the issue? Give your reasons.

Read the material the teacher has handed you. Study the hypothetical so that you can participate in classroom analysis of the situation. Use the questions as a guide to your discussion. The information you gained from the lawyer's visit will be of importance to your analysis.

HYPOTHETICAL CASE #2

The Lindsays' two-story residence is located on the top of a hill in the Lakeville area, an upper middle class neighborhood. The house has been broken into and robbed twice. There have been several other robberies in the neighborhood. Mr. Lindsay has a fine collection of paintings, sculptures and other art objects which he values highly. After the second robbery, Mr. Lindsay had all the windows in the house wired so that a person opening a window would receive an electrical charge strong enough to deter him/her, but not strong enough to cause any bodily injury. This trap was set by a switch located in Mr. Lindsay's bedroom.

Late one night Mr. Lindsay was awakened by the noise of someone walking on the first story roof. Without looking out to see who or what might be there, Mr. Lindsay flipped the switch to activate the electric trap.

an on the roof put his hands on the window to lift it, ved a shock and fell. He rolled down the steep sloping and landed on the ground below.

Mr. Lindsay called the police, then ran outside. He found the suspected intruder on the ground. He was dead. An autopsy showed that death was caused by a heart attack, probably resulting from the unexpected shock.

QUESTIONS

A. Was Mr. Lindsay acting within his right to protect his property when he installed the electric trap? Why? Why not? Would you answer differently if a warning notice had been posted outside the house? If it had been the window of the White House?

B. Do you think it was reasonable of Mr. Lindsay to assume that anyone breaking into his home would inflict bodily harm to him if apprehended? Do you believe that this type of reasoning permits Mr. Lindsay to have such a hidden device installed? Would you have the same opinion if Mr. Lindsay had left the house and turned on the switch to protect the house while he was gone?

C. Do you think the police should arrest Mr. Lindsay on the charge of manslaughter? If not, why not? Do you think the burglar's widow and child should be able to sue Mr. Lindsay for the wrongful death of this man?

D. How would you rule in this case if you were a juror? A judge?

GLOSSARY

BATTERY - Any intentional, unwanted, unprovoked, harmful physical contact by one person (or an object controlled by that person) with another person.

NEGLIGENCE - The failure to exercise a reasonable or ordinary amount of care in a situation that causes harm to someone or something. It can involve doing something carelessly or failing to do something that should have been done. Negligence can vary in seriousness from gross (recklessness or willfullness), through ordinary (failing to act as a reasonably careful person would) to slight (not much).

PRIVILEGE - A special advantage as opposed to a right. An exemption from duty others like you must perform.

PROSECUTE - To pursue for redress or punishment of a crime or violation of a law in due legal form before a legal tribunal.

REAL PROPERTY - Land and things attached to land, such as buildings.

REASONABLE - A broad, flexible word used to make sure that a decision is based on the facts of a particular situation, rather than on abstract legal principles. It has no exact definition, but has come to take on general meanings when combined with words such as reasonable "care", "certainty", "doubt", "man", "speed", "time", etc.

TRESPASS - A wrongful entry onto another person's property.

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.

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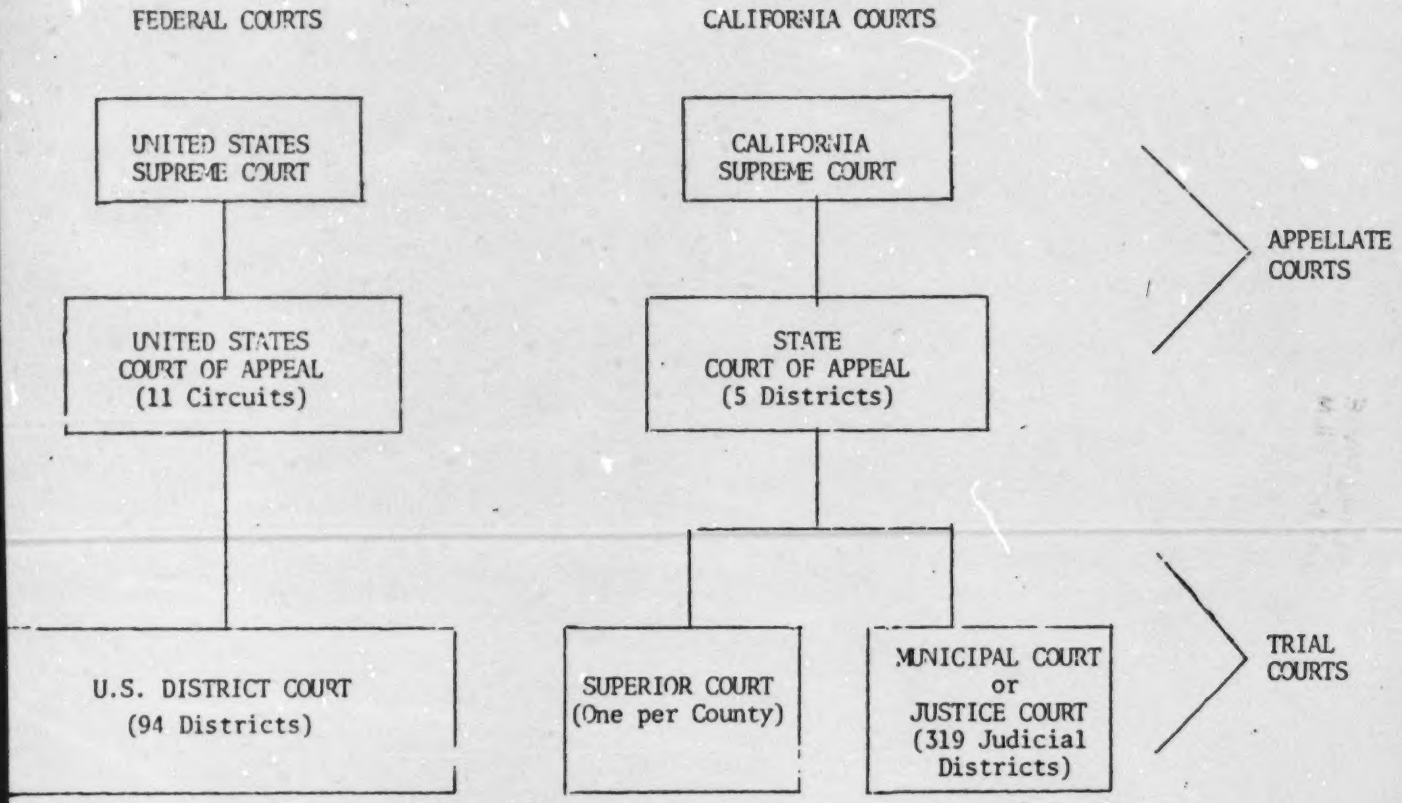
FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE Federal & CALIFORNIA COURT STRUCTURES

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.Personal Property)

TEACHER'S LESSON PLAN

INTRODUCTORY UNIT

Before the lawyer discusses that area of the law called TORTS, it is advisable for the students to know what this peculiar word means, how to recognize a Tort, and to understand why such laws exist.

First give the students a definition of a Tort.

> A TORT is defined as any wrong, other than a breach of contract, resulting in a personal injury or property damage because of a person's failure to carry out a duty. The law recognizes that people should act with reasonable care to avoid harming other persons or the property of other persons. A tort is a civil action. The penalties, under civil law, require the offender (defendant) to pay money, or to do or not to do a specific act to or for the person bringing suit (plaintiff). A tort can be either intentional or unintentional.

> An Intentional Tort is the result of a dliberate attempt to cause harm. For example battery is the intentional , harmful or offensive touching of another wothout his/her consent. An injured person can sue to recover for his/her injury. The same act of battery can result in both a civil and criminal prosecution.

> > Frank knocks Bill off his bike and Bill's arm is broken.

Frank has committed a crime by his willful and forceful act of knocking Bill off his bike. The state can prosecute Frank for his criminal battery. Bill can sue Frank for the injury to his arm which was a result of a civil battery.

> An unintentional tort is an unintentional act that causes injury. This is further defined as negligent conduct, which is failure to exercise reasonable or ordinary amount of care in a situation that causes harm to someone or something.

> > Jim is riding his skateboard down the driveway next to his house and runs into Mrs. Jones, who is walking on the sidewalk, and knocks her down.

It is reasonable to expect that people might be walking on a sidewalk, and Jim owes a duty to these people not to run into them while playing. He was negligent in this duty when he ran into Mrs. Jones.

So that the students will understand the difference between an intentional and an unintentional tort, have them read the incidents below and answer the questions.

HYPOTHETICALS AND QUESTIONS FOR DISCUSSION

A. Lois has met a young man at a party whom she finds attractive. When she is ready to leave, she goes up to the young man and kisses him on the cheek.

   1. Is the kiss a battery?

   2. If you think it is a battery, would you say it was a civil or a criminal battery? Explain your reasons.

B. Billy and Fred are on their front lawn throwing passes to each other with a football. Billy misses a pass and the ball goes through Mr. Jones' picture window and breaks a lamp.

   1. Is this a tort? If so, is it an intentional or unintentional act? Explain the reasons for your answers?

   2. Do you think Mr. Jones is entitled to payment for the damage done to the window and the lamp? Why? Why not?

C. Two young men approach Mrs. Littlejohn who is taking a walk on the street. They ask for the time. As Mrs. Littlejohn raises her arm to look at her wristwatch, the men knock her down, grab her purse and run. Mrs. Littlejohn's arm is broken in the fall.

   1. Is this a tort? If so, is it an intentional or unintentional act? Explain your reasons for your answer.

   2. Would you say both a civil battery and a criminal battery have been committed? Explain your reasons for your answer.

KEEP OUT - DANGER!

D. Two young men are playing around on the sidewalk, boxing and chasing each other. One of the fellows bumps into Mrs. Francis, who is walking on the street, and knocks her down. Her arm is broken in the fall.

1. Is this a tort? If so, is it an intentional or unintentional act? Explain your reasons for your answer.

2. Can Mrs. Francis sue the young man for damages? Why? Why not?

E. Paula Williams had been marketing and was walking home when a car drew up alongside her and stopped. Two nurses jumped out of the car, grabbed Paula and tried to force her into the car. Paula resisted. However, they managed to get her into the car, locked the door and drove her to a nearby mental institution.

When they brought her into the hospital, it was discovered that Paula was not the missing patient the nurses had been looking for.

1. Is this a battery? If you think it is a battery, is it a civil or a criminal battery? Explain your reasons.

2. Can Paula Williams sue the mental institution and the nurses for taking her prisoner and restraining her against her will?

F. It is a very hot day. Jim and Lucy would like to take a swim in their neighbor's pool but the Browns are not at home. They decide to swim anyway. The Browns come home and find Lucy and Jim in the pool and chase them out.

1. Do you think that Lucy and Jim have trespassed on the Browns' property? Why? Would you say that trespass is a tort? Why?

2. Since no damage has been caused to the Browns' property, do you think they could sue Lucy and Jim?

NOTE: In the course of the discussion, have the students make note of some of the questions about this area of the law they do not understand so that they can discuss them with the lawyer when he/she visits your class.

LAWYER-IN-THE-CLASSROOM UNIT

Copy and distribute the Lawyer-in-the-Classroom Unit materials in the Student's Lesson Plan. Ask the students to study the case carefully and consider the facts presented so they can discuss the issues with the lawyer.

The objective is to expose students to the privilege to use force in defense of real and/or personal property.

CASE

Mr. Smith owned an unoccupied farmhouse. Through the years he had boarded up the windows and doors and posted "no trespass" signs in an attempt to stop intrusions by trespassers. On June 19, 1976, Mr. Smith set a "shotgun trap" in the bedroom. A 20-gauge shotgun was secured to an iron bed with the barrel pointed at the bedroom door. It was rigged with wire from the doorknob to the gun's trigger so that it would fire and hit an intruder in the legs when the door was opened. The bedroom window was boarded up so that the intruder could not see the existence of the shotgun trap, and no warning of its presence was posted on the outside of the farmhouse.

Mr. Jones, a thief, entered the old farmhouse by removing a board from a porch window. As he started to open the bedroom door, the shotgun went off, strking him in the right leg above the ankle bone. Much of his leg was blown away.

Mr. Jones sues Mr. Smith and seeks to recover for the injury.

QUESTIONS

A. What are the major issues raised by the case?

1. Does a landowner have the right to utilize devices which can cause death or serious bodily injury in order to exclude trespassers from his real and/or personal property?

2. In designing the limitations of such a privilege, does it make a difference if the property is unoccupied, as opposed to occupied?

3. In designing the limitations of such a privilege, does it make a difference if the landowner posts a warning to the potential intruder of the danger should the intruder enter the premises?

4. In designing the limitations of such a privilege, does the reason for the intrusion (theft, seeking shelter, etc.) make a difference?

B. What are the interests of Mr. Jones in this issue? Of Mr. Smith? Do you think society has an interest? Whose interests should be or are protected?

C. If you were Mr. Smith, what arguments would you make in defense of using such a trap?

D. If you were Mr. Jones, what arguments would you make against using such a trap?

E. Who do you think should win the case? Why?

FOLLOW-UP UNIT

To evaluate the effectiveness of the lawyer's visit, select one of the two hypothetical cases presented in this Unit for classroom analysis and discussion.

Copy and distribute the case you will use for the open-ended discussion from the materials in the Follow-Up Unit in the Student's Lesson Plan. The questions listed with the case can be used as a springboard to stimulate analysis of the hypothetical situation.

HYPOTHETICAL CASE #1

Although the city had grown up around him, Mr. Brown maintained his property as a tiny farm in the midst of the apartment houses that lined the street where he lived. He had several varieties of fruit and a large garden filled with tomatoes, lettuce, cucumbers, onions, and other choice vegetables.

Over the years, the boys in the neighborhood have considered it good sport to poach on Mr. Brown's fruits and vegetables, as much to excite his temper as to enjoy the delicious food. To protect himself against these young marauders, Mr. Brown topped his fences with barbed-wire and posted signs reading "Private Property. Keep Out. Trespassers Will Be Prosecuted" around the property.

One evening Jerry and Bill decided to steal some peaches off the trees in Mr. Brown's garden. They sneaked into the garden by moving a loose board in the fence and were in the trees picking the fruit when Mr. Brown saw them. He yelled at them to get out. "I'm calling the police," he shouted at them. "Get out of my trees, you vandals!"

The frightened boys dropped out of the trees and ran across the yard. Jerry got out through the loose slat, but Bill, in his frightened hurry, tried to scale the fence. As he attempted to squeeze under the barbed wire, he received a severe electric jolt that knocked him off the fence. His hands were burned and his face and body were severely torn by the barbs. His parents sued Mr. Brown for damages resulting from the wounds Bill had received from the electrified barbed wire.

QUESTION

A. Had Mr. Brown the right to protect his property from trespassers? Why?

B. If you believe that he does, do you agree that he has a right to put up a fence that creates a danger of injury to a person who might trespass? Why? Why not?

C. Does the fact that the barbed wire fence was visibly dangerous and that signs warning against trespassing were posted around the property give Mr. Brown the right to have a "hidden" device to defend his property? Why? Why not?

D. Although the boys obviously did not pose any threat to Mr. Brown, was it reasonable for Mr. Brown to assume that a trespasser might be a danger to himself and his property? If so, do you think it was lawful for him to electrify the fence and not have a sign posted announcing this fact? Why? Why not?

E. Do you think Bill's parents are justified in suing Mr. Brown for the injuries suffered by their son? Why? Why not?

F. If you were the judge in this case, how would you resolve the issue? Give your reasons.

HYPOTHETICAL CASE #2

The Lindsays' two-story residence is located on the top of a hill in the Lakeville area, an upper middle class neighborhood. The house has been broken into and robbed twice. There have been several other robberies in the neighborhood. Mr. Lindsay has a fine collection of paintings, sculptures and other art objects which he values highly. After the second robbery, Mr. Lindsay had all the windows in the house wired so that a person opening a window would receive an electrical charge strong enough to deter him/her, but not strong enough to cause any bodily injury. This trap was set by a switch located in Mr. Lindsay's bedroom.

Late one night Mr. Lindsay was awakened by the noise of someone walking on the first story roof. Without looking out to see who or what might be there, Mr. Lindsay flipped on the switch to activate the electric trap.

The man on the roof put his hands on the window to lift it, received a shock and fell. He rolled down the steep sloping roof and landed on the ground below.

Mr. Lindsay called the police, then ran outside. He found the suspected intruder on the ground. He was dead. An autopsy showed that death was caused by a heart attack, probably resulting from the unexpected shock.

QUESTIONS

A. Was Mr. Lindsay acting within his right to protect his property when he installed the electric trap? Why? Why not? Would you answer differently if a warning notice had been posted outside the house? If it had been the window of the White House?

B. Do you think it was reasonable of Mr. Lindsay to assume that anyone breaking into his home would inflict bodily harm to him if apprehended? Do you believe that this type of reasoning permits Mr. Lindsay to have such a hidden device installed? Would you have the same opinion if Mr. Lindsay had left the house and turned on the switch to protect the house while he was gone?

C. Do you think the police should arrest Mr. Lindsay on the charge of manslaughter? If not, why not? Do you think the burglar's widow and child should be able to sue Mr. Lindsay for the wrongful death of this man?

Information For The Teacher

The property owner is privileged to use force which is intended or likely to cause death or serious bodily harm for the purpose of preventing intrusion by a trespasser, where it reasonably appears to him to involve danger of death or serious bodily harm to the occupiers or users of the land. Because he is occupying the premises, if he could reasonably believe that a potential trespasser could cause harm to him or to other occupiers, and there is no alternative means of protection, the fact that the owner is or is not present at the particular time that the trespasser intrudes, or the fact that the trespasser is intruding without intent to cause harm to the landowner, cannot be known by the landowner. Certainly the landowner can use force directly, as well as indirectly, by the use of a mechanical device which is reasonably necessary to protect possession when the landowner is present, will allow the landowner to install such a device for reasonable periods when he is not present on the property, and will protect against any trespassers, regardless of intent. The question must be the reasonableness of the use of the deadly force, which will require an examination of alternatives to the use of the deadly force and the previous experience of the property owner.

QUESTION

D. How would you rule in this case if you were a juror? A judge?

Information For The Teacher

The Restatement of Torts §84 has summarized the circumstances under which a property owner is privileged to employ for the purpose of protecting his possession of land and/or personal property, a device not intended or likely to cause death or serious bodily harm, as follows:

A. If the use of a device is reasonably necessary to protect his possessions from intrusion,

B. The use of the particular device under the circumstances is reasonable, and

C. The device is one customarily used for such a purpose or reasonable care is taken to make its use known to intruders.

The rationale of Katko v. Briney that human life occupies a higher place in our system of values than material possession, suggests that under no circumstances would the property owner be privileged to put forces into motion which would inflict serious bodily injury upon another in defense of property, where there is no danger of physical injury to the property owner. Therefore, the fact that a warning sign was posted would not appear to justify a contrary result. In answering the hypothetical the students must consider what steps are reasonably necessary for a property owner to take to protect himself against potential personal injury caused by a trespasser. An occupier of a house cannot know whether a potential trespasser has an intent or will cause the property owner personal injury. Thus, the courts will look to see if the property owner has resorted to excessive violence and unnecessary force by installing a trap in a house.

If a property owner lives in a high crime area where there are many intrusions and where there have been previous personal injuries to occupiers of property, it may be reasonable for the property owner to use a device capable of inflicting deadly harm if there is no other alternative. Usually, in the case of a home, there will be an alternative, as in the case of a burglar alarm or devices that will cause less than deadly force. In protecting one's dwelling, the courts will balance whether the activity was reasonable in light of previous experience, and the alternative methods of securing the premises.

GLOSSARY

BATTERY - Any intentional, unwanted, unprovoked, harmful physical contact by one person (or an object controlled by that person) with another person.

NEGLIGENCE - The failure to exercise a reasonable or ordinary amount of care in a situation that causes harm to someone or something. It can involve doing something carelessly or failing to do something that should have been done. Negligence can vary in seriousness from gross (recklessness or willfullness), through ordinary (failing to act as a reasonably careful person would) to slight (not much).

PRIVILEGE - A special advantage as opposed to a right. An exemption from duty others like you must perform.

PROSECUTE - To pursue for redress or punishment of a crime or violation of a law in due legal form before a legal tribunal.

REAL PROPERTY - Land and things attached to land, such as buildings.

REASONABLE - A broad, flexible word used to make sure that a decision is based on the facts of a particular situation, rather than on abstract legal principles. It has no exact definition, but has come to take on general meanings when combined with words such as reasonable "care", "certainty", "doubt", "man", "speed", "time", etc.

TRESPASS - A wrongful entry onto another person's property.

KEEP OUT - DANGER!

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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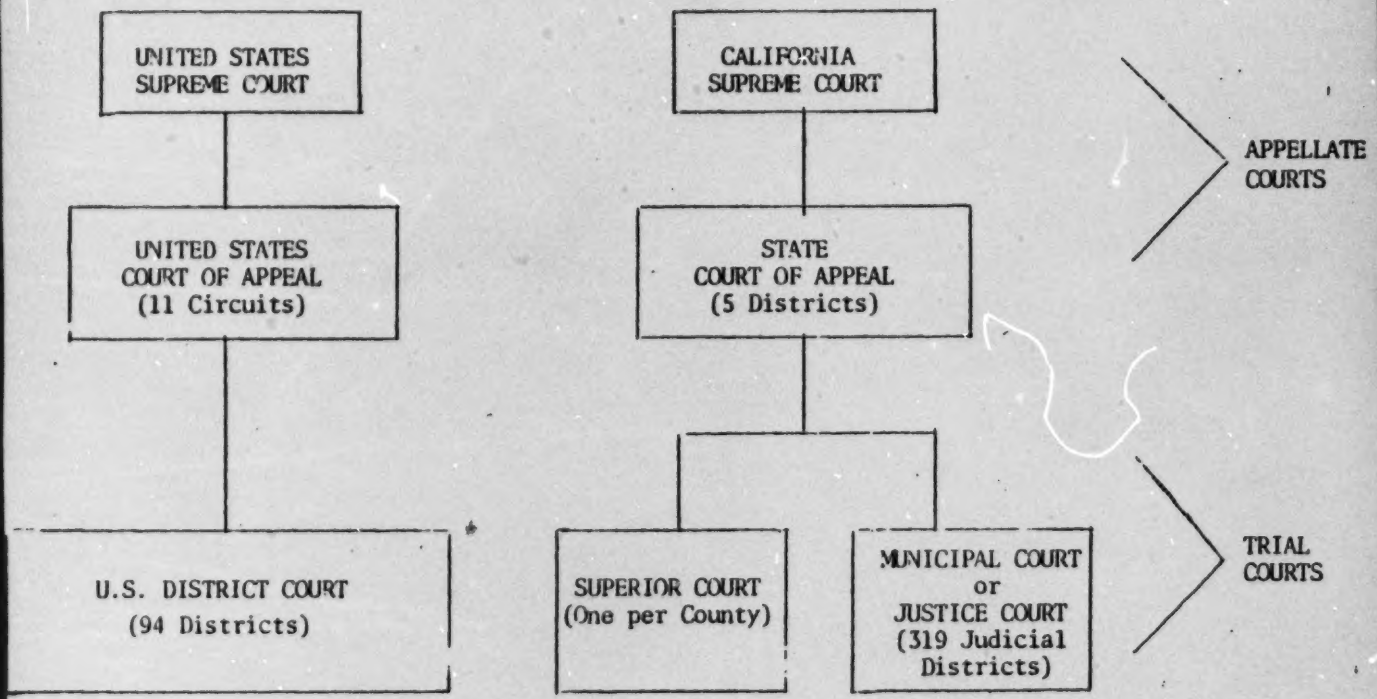
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
CALIFORNIA SUPREME COURT
APPELLATE COURTS
UNITED STATES COURT OF APPEAL (11 Circuits)
STATE COURT OF APPEAL (5 Districts)
U.S. DISTRICT COURT (94 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"KEEP OUT - DANGER!"

Use of Devices Which Can Cause Death or Serious Bodily Injury in Defense of Real and/or Personal Property

A Lawyer Lesson Plan
Prepared by Diane L. Becker, 1976

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KEEP OUT - DANGER!
(Use of Devices Which Can Cause
Death or Serious Bodily Injury
in Defense of Real and/or
Personal Property)

LAWYER'S LESSON PLAN

Area of Law: Torts

Specific Topic: Use of Devices Which Can Cause Death or Serious Bodily Injury in Defense of Real and/or Personal Property

Objective: To expose students to the privilege of using force in defense of real and/or personal property.

CASE

The case used in this fact sheet is based on the landmark case Katko v. Briney., 183 N.W. 2d 657 (iowa 1971).

Mr. Smith owned an unoccupied farmhouse. Through the years he had boarded up the windows and doors and posted "no trespass" signs in an attempt to stop intrusions by trespassers. On June 19, 1976, Mr. Smith set a "shotgun trap" in the bedroom. A 20-gauge shotgun was secured to an iron bed with the barrel pointed at the bedroom door. It was rigged with wire from the doorknob to the gun's trigger so that it would fire and hit an intruder in the legs when the door was opened. The bedroom window was boarded up so that the intruder could not see the existence of the shotgun trap, and no warning of its presence was posted on the outside of the farmhouse.

Mr. Jones, a thief, entered the old farmhouse by removing a board from a porch window. As he started to open the bedroom door, the shotgun went off, strking him in the right leg above the ankle bone. Much of his leg was blown away.

Mr. Jones sues Mr. Smith and seeks to recover for the injury.

QUESTIONS

A. What are the major issues raised by the case?

1. Does a landowner have the right to utilize devices which can cause death or serious bodily injury in order to exclude trespassers from his real and/or personal property?

2. In designing the limitations of such a privilege, does it make a difference if the property is unoccupied, as opposed to occupied?

3. In designing the limitations of such a privilege, does it make a difference if the landowner posts a warning to the potential intruder of the danger should the intruder enter the premises?

4. In designing the limitations of such a privilege, does the reason for the intrusion (theft, seeking shelter, etc.) make a difference?

B. Who has an interest in the issues?

Mr. Jones, the trespasser, and society in general, have an interest in preservation of human life and limb. Mr. Smith, the landowner, has an interest in possession and in preventing entry by intruders upon his property. The interest of the property owner, the trespasser, and society in general have been acknowledged by the Courts. The Courts have balanced the interests of the various parties and have held that while society has an interest in protecting the property rights of its members, human life occupies a higher place in our system of values than material possessions. The Courts balance the competing interest presented by the various factual situations in favor of preservation of human life and limb.

C. What are the arguments supporting the interest of the parties involved?

The law gives the property owner the privilege to use force to resist a trespass to his property. The privilege to use force in defense of property rests upon much the same public policy considerations as the public policy considerations allowing the use in defense of self and in defense of third persons; of force privileges recognize that the societal interest in protection of human life occupies a higher place in our system than an interest in material possessions. Thus, the privilege to use force in defense of property or in defense of self or in defense of third persons, in any given factual situation, will balance in favor of the preservation of human life and limb. But the privilege which is granted to the property owner is limited by the requirement that the force used by the property owner must be necessary and not excessive in view of the interest involved.

The Courts examine each case to determine whether or not the force used by the property owner is of a kind appropriate to the defense of the property interest threatened. Thus, where the intruder is not proceeding with violence, the property owner may use the force reasonably necessary to overcome his resistance and expel him, and, if in the process his own safety is threatened, he may defend himself and even kill if necessary. But as the Court stated in People v. Hubbard, 64 Cal.App. 27, 38 (1923):

> "While one may use force, if necessary to remove an intruder who refuses to leave after being requested to depart, it must not be assumed that he may intentionally kill another solely in defense of habitation. No person may intentionally kill merely because he cannot otherwise effect his object, although the object sought to be affected is right. He can kill intentionally only in defense of life or person, or to prevent a felony. . . ."

Thus, it is the accepted rule that there is no privilege to use force calculated to cause death or serious bodily injury to repel a threat to real and/or personal property unless there is also such a threat to the property owner's personal safety as to justify the use of deadly force in defense of self, as in the case of a trespasser who the possessor believes will threaten death or serious bodily harm to the possessor or other occupiers of the premises. Thus, the court in People v. Hubbard, supra, page 36, continued:

> "[I]f the intruder resists his ejection and assaults the lawful occupant, the latter need not retreat, but in protecting his person, he may, if necessary, intentionally take the intruder's life if he has reason to believe and does believe that his own life is in danger or that he is in danger of receiving great bodily harm."

Clearly the Courts would not allow the property owner to do indirectly what he could not do directly, and the privilege to protect property by dangerous mechanical devices, as in the case of a "shotgun trap" as set forth in the hypothetical is no greater than that of defense by personal act.

D. Ask the students how they would feel if the situation involved them, or someone they like or dislike.

E. What effect, if any, would the following factors have in resolving the dispute of the problem? What effect should they have?

1. Prejudice;

2. Sympathy;

3. Society's needs.

F. Ask the students how they would resolve the problem and why.

RESOLUTION OF DISPUTE

In the hypothetical case, Mr. Smith had no fear for his personal safety or for the personal safety of third persons, as the factual situation recites that the farmhouse was unoccupied, and further recites the fact that Mr. Smith set the shotgun trap for the sole and exclusive purpose of injuring trespassers so as to prevent further intrusions. The Court would rule in favor of society's interest in preserving Mr. Jones' life and limb, rather than in favor of property by the use of deadly force.

ADDITIONAL HYPOTHETICALS

The following hypotheticals are based on the issues explicitly left unresolved by the Court in the Katko v. Briney decision and are designed to stimulate the students' thinking, not to inform the student of the present state of the law.

A. If Smith had posted a notice to trespassers warning that devices which could cause death or serious bodily harm had been installed in the house, would he have been privileged to set the device?

The rationale of Katko v. Briney that human life occupies a higher place in our system of values than material possession, suggests that under no circumstances would the property owner be privileged to put forces into motion which would inflict serious physical injury upon another in defense of property, where there is no danger of physical injury to the property owner. Therefore, the fact that a warning sign was posted would not appear to justify a contrary result.

Query: If a warning sign is posted and the trespasser still chooses to proceed, isn't the trespasser himself responsible for the subsequent injury? The students should consider whether society should protect the intruder who trespasses knowing that deadly devices have been installed, and thus knowingly decides to take the risk of injury.

B. What if the shotgun trap had been installed at Smith's home instead of an unoccupied farmhouse?

In answering this hypothetical, the students must consider what steps are reasonably necessary for a property owner to take to protect himself against potential personal injury caused by a trespasser. An occupier of a house cannot know whether a potential trespasser has an intent to or will cause the property owner personal injury. Thus, the Courts will look to see if the property owner has resorted to excessive violence and unnecessary force by installing a shotgun trap in a house.

In one recent California case (Boyer v. Waples, 206 Cal. App.2d 725 (1962)), the court affirmed a judgment denying recovery to a plaintiff when the plaintiff was shot by a defendant as he approached the defendant's home at midnight. The defendant's stepdaughter had broken an engagement with the plaintiff and the plaintiff had threatened the defendant, had previously damaged defendant's property and the defendant had purchased a rifle to protect himself against the plaintiff. On the night in question, the defendant saw the plaintiff sneaking through the bushes and saw an object in plaintiff's hand which he feared to be dynamite. (The object was a flashlight.) The defendant shot and injured the plaintiff. The court ruled that the defendant reasonably feared for his safety and was entitled to use deadly force.

If a property owner lives in a high crime area where there are many intrusions and where there have been previous personal injuries to occupiers of property, it may be reasonable for the property owner to use a device capable of inflicting deadly harm if there is no other alternative, as in the case of a burglar alarm or devices that will cause less than deadly force.

It is important to note, however, that the interest in securing one's home will be different than the interest in securing an unoccupied premises, and where there is

reasonable cause to believe that the occupier could be subject to serious bodily harm there will be a countervailing interest that will come into effect. In protecting one's dwelling the courts will balance whether the activity was reasonable in light of previous experience, and the alternative methods of securing the premises.

The students should consider whether the property owner can be compelled to request the intruder to leave the premises prior to using deadly force, and thus precluding the use of a trap. It is true that the intruder may decide to leave the premises upon the "threat" of deadly force, but arguably, the property owner cannot know what the trespasser will do and the question arises as to whether the property owner should be put in danger by requiring him to warn the trespasser first.

C. Jones broke into Smith's unoccupied house during a storm, in order to shelter himself from the storm, and with no other purpose, and was injured by the shotgun trap. Does it make a difference that Jones is not a thief?

If the student resolves the previous hypothetical by determining that Smith had the right to protect his dwelling against intrusions by trespassers because Smith was himself in physical danger, Smith must have the privilege to use such force against any intruder, regardless of the intruder's intent - that is, whether the intruder is a thief or an individual attempting to shelter himself from the storm.

The property owner is privileged to use force which is intended or likely to cause death or serious bodily harm for the purpose of preventing intrusion by a trespasser, where it reasonably appears to him to involve danger of death or serious bodily harm to the occupiers or users of the land. Because he is occupying the premises, if he could reasonably believe that a potential trespasser could cause harm to him or to other occupiers, and there is no alternative means of protection, the fact that the owner is or is not present at the particular time that the trespasser intrudes, or the fact that the trespasser is intruding without intent to cause harm to the landowner, cannot be known by the landowner. Certainly the landowner can use force directly, as well as indirectly, by the use of mechanical devices. The privilege to install the mechanical device which is reasonably necessary to protect possession when the landowner is present, will allow the

landowner to install such a device for reasonable periods when he is not present on the property, and protect against any trespassers, regardless of intent. Again the question must be the reasonableness of the use of the deadly force, which will require an examination of alternatives to the use of the deadly force and the previous experience of the property owner.

D. If Smith had attempted to protect his unoccupied farmhouse against intrusion by installation of a barbed wire fence around it, and Jones had walked into the barbed wire fence and cut himself severely while trying to break into the unoccupied farmhouse, would Smith be liable?

The Restatement of Torts §84 has summarized the circumstances under which a property owner is privileged to employ for the purpose of protecting his possession of land and/or personal property, a device not intended or likely to cause death or serious bodily harm, as follows:

1. If the use of a device is reasonably necessary to protect his possessions from intrusion,

2. The use of the particular device under the circumstances is reasonable, and

3. The device is one customarily used for such a purpose or reasonable care is taken to make its use known to intruders.

Certainly a barbed wire fence may be so constructed, located and maintained as to be a reasonable means of protecting the property owner's possessions from intrusion and may therefore be privileged insofar as to give immunity from liability for non-deadly injury caused to a deliberate intruder. Admittedly, while these devices are intended to harm a deliberate intruder, the purpose is not so much to harm the intruder, as to protect the property owner's possession by the deterrent effect which knowledge of its use is likely to have upon those who would otherwise intrude.

The use of the device must be reasonably necessary although there may be other means to prevent the intrusion. The students should be encouraged to balance the burden of supplying alternative protection with the risk of injury to deliberate intruders. Among the factors determining the reasonableness of the means of protecting the land from intrusion will be the degree of

probability that the device will not inflict any harm upon the intruder, and the burden put upon the property owner by requiring alternative means of protection. Certainly, the more harm that the device will impose, the greater the burden must be upon the landowner to avoid the burden by utilizing an alternative means. The students should experiment by balancing the risk of harm to the possible intuder and the nature of the harm likely to be done by the intrusion to the property owner's property.

The students should be encouraged to consider the likelihood of whether the knowledge of the use of the non-deadly device will cause people who would otherwise intrude to desist from doing so, and to consider the amount of harm which the device will be likely to impose.

The students should also consider whether the posting of a warning of the use of a non-deadly mechanical device to exclude trespassers will be sufficient to justify its use. The justification for use of devices such as barbed wire is that knowledge of their use will induce people who would otherwise violate a premise to refrain from doing so. Thus, a warning of the use of the device would certainly further this goal.

REFERENCES

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